

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROWLAND PUGH,

Plaintiff, No. CIV S-04-1091 DFL PAN P

vs.

A. STONE, et al.,

Defendants. ORDER TO SHOW CAUSE

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his complaint on June 7, 2004 and paid the filing fee.

By order filed March 17, 2005, the court found plaintiff's complaint stated a cognizable claim for relief against defendants and directed plaintiff to serve process pursuant to Fed. R. Civ. P. 4. On March 22, 2005, plaintiff sought the court's assistance in serving defendants. However, because plaintiff was not proceeding in forma pauperis, plaintiff's request was denied. (April 12, 2005 Order.) On April 27, 2005, the court directed the Clerk of Court to issue the summons and return them to plaintiff.

On June 3, 2005, plaintiff filed a declaration by Theresa Bridges, process server, who declared she had served the defendants by placing copies of the complaint and the summons in the U.S. Mail and mailing it to defendants' place of employment at High Desert State Prison,

1 P.O. Box 270 220, Susanville, CA 96127 on June 1, 2005.

2 On June 6, 2005, the plaintiff filed a declaration stating that on May 2, 2005, Tim
3 Richardson, acting as process server in this case, served the summons and complaint on the
4 defendants in the above-mentioned cause of action at the defendants' "place of [abode] and/or
5 Place of Employment at: High Desert State Prison, 475 - 750 Rice Canyon Rd., Susanville, CA
6 96127." (Id. at 4.) However, the appended returns of service confirm that Mr. Richardson
7 mailed the summons and complaint to defendants. (Id., Exs. A - L.)

8 On June 27, 2005, plaintiff filed another declaration in which he states the
9 litigation coordinator returned the summons and complaint to Theresa Bridges for reasons
10 unknown. (Docket No. 11.) Plaintiff again asks the court to order the U.S. Marshal to serve the
11 summons and complaint for plaintiff. (Id. at 4.) On June 27, 2005, plaintiff filed a declaration in
12 which he states the litigation coordinator returned the summons and complaint to Tim
13 Richardson, stating that defendants M. Stewart, P. Lau, J. Rivas and C. Pagala no longer work at
14 High Desert State Prison. (Docket No. 12.) Plaintiff renews his request to have the U.S. Marshal
15 execute service of process herein. (Id. at 4.)

16 Plaintiff is advised that mailing the summons and complaint to a defendant does
17 not comply with Fed. R. Civ. P. 4(e). Thus, plaintiff has not accomplished service of process
18 within the time constraints of Fed. R. Civ. P. 4(m). Accordingly, plaintiff shall be ordered to
19 show cause why this action should not be dismissed for failure to comply with Fed. R. Civ. P.
20 4(m).

21 The court previously denied plaintiff's request for assistance from the U.S.
22 Marshal to execute service of process. Because plaintiff paid the filing fee and is not proceeding
23 in forma pauperis, there is no provision for the U.S. Marshal to execute service on plaintiff's
24 behalf. However, if plaintiff believes he is entitled to in forma pauperis status, he should provide
25 a completed in forma pauperis affidavit to the court. Plaintiff should file the affidavit for the
26 court's consideration forthwith.

1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff shall show cause, within thirty days, why this action should not be
3 dismissed. Fed. R. Civ. P. 4(m). Failure to timely respond to this order will result in a
4 recommendation that this action be dismissed.

5 2. The Clerk of the Court is directed to send plaintiff an application to proceed in
6 forma pauperis.

7 DATED: March 15, 2006.

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10 UNITED STATES MAGISTRATE JUDGE

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